

ENTERED AS INSTRUMENT NO

0200807155

STATE OF NEBRASKA)
COUNTY OF HALL) SS

2008 AUG 18 PM 3 25

Kathy Baasch
REG OF DEEDS

CASH _____
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PROFESSIONAL TITLE _____

REFUNDS: _____
CASH _____
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G.I.ABSTRACT



200807155

THIRD AMENDMENT TO
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS
200807155

This Third Amendment to Declaration of Restrictions and Grant of Easements ("Third Amendment") is made and entered into on this 15 day of August, 2008 ("Effective Date"), by and among ROBERT M. ALLEN FAMILY LIMITED PARTNERSHIP, a Nebraska limited partnership ("Allen"); ALLEN PARCEL 24 LLC, a Nebraska limited liability company ("Allen 24"); BNS PROPERTY III, L.L.C., a Nebraska limited liability company ("BNS"); and HOME DEPOT U.S.A., INC., a Delaware corporation ("Home Depot").

RECITALS

A. Allen and Albertson's, Inc. ("Albertson's") entered into a certain Declaration of Restrictions and Grant of Easements dated March 11, 1999 (the "1999 Declaration"). The 1999 Declaration was recorded on June 24, 1999 as Instrument No. 99-106376 in the Official Records of Hall County, Nebraska. The 1999 Declaration was amended by a certain First Amendment to Declaration of Restrictions and Grant of Easements dated August 21, 2000 (the "First Amendment"). The First Amendment was recorded on September 25, 2000 as Instrument No. 00-007944. The 1999 Declaration and the First Amendment are hereinafter collectively referred to as the "Original Declaration". The 1999 Declaration and the First Amendment were amended by a certain Second Amendment to Declaration of Restrictions and Grant of Easements dated July 24, 2002 (the "Second Amendment"). The Second Amendment was recorded on July 25, 2002 as Instrument No. 02-00207725. The 1999 Declaration, the First Amendment, the Second Amendment and this Third Amendment are hereinafter collectively referred to as the "Declaration".

B. Village Development - Grand Island, L.L.C. has purchased (or is about to purchase) Parcels 25 and 26 as depicted on the Site Plan attached hereto as Exhibit "A" (sometimes referred to as the "Walgreens Parcel").

C. Allen, BNS and Home Depot are the Owners of the Parcels containing at least ninety percent (90%) of the total square footage of Building Area in the Shopping Center as required by Section 8.5 of the 1999 Declaration for the purpose of modifying the Declaration.

D. The parties desire to make certain modifications to the Declaration as set forth below.

426076.3

Return to

PROFESSIONAL TITLE AND ESCROW CO.
8535 EXECUTIVE WOODS DRIVE, #300
LINCOLN, NE 68512

2600
LY333L

Agreement

Now, therefore, in consideration of the foregoing Recitals which are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** Except as set forth herein, the recitals are incorporated herein as if set forth in full.

2. **Capitalized Terms.** All capitalized terms that are not defined in this Third Amendment shall have the meanings respectively given to them in the Declaration.

3. **Conflict or Inconsistency.** In the event of any conflict or inconsistency between the provisions of this Third Amendment and the Declaration, the provisions of this Third Amendment shall control.

4. **Addition of Section 2.1(e).** A new Section 2.1(e) is hereby added as follows:

(e) **Consolidation of Building Areas on Parcels 25 and 26.** Notwithstanding the provision of Section 2.1(a) of the 1999 Declaration, the Owner(s) of Parcels 25 and 26 may consolidate into one (1) parcel Lots 25 and 26 and reconfigure the Building Areas on Parcels 25 and 26, as shown on the Site Plan attached hereto as Exhibit "A", including extending Building Areas over common Parcel lines between Parcels 25 and 26 (which process is referred to herein as the "**25/26 Consolidation**"), subject to the following requirements:

(i) The revised Building Envelope for the Walgreens Parcel is depicted on the Site Plan;

(ii) The total combined Building Area of Parcels 25 and 26 shall be increased to fifteen thousand (15,000) square feet and the total number of buildings allowed on Parcels 25 and 26 shall not be increased as a result of the 25/26 Consolidation;

(iii) All approval requirements (including, without limitation, building design and Common Area configuration) other than those approvals which would otherwise apply to Building Area changes shall continue to apply, as shall the height Restrictions for Parcels 25 and 26; provided, however, it is agreed and understood that the height restriction for the Walgreens Parcel shall be twenty five (25) feet plus an additional five (5) feet for any architectural element or feature;

(iv) The party exercising any rights permitted by this Section 2.1(e) shall pay all expenses associated with changing the Building Areas, and shall also obtain all required governmental approvals to the 25/26 Consolidation, at its own expense;

(v) If any Consenting Owner requests an amendment to the Development Agreement, the CAMA or the Declaration to reflect changes made to the Shopping Center as a result of the 25/26 Consolidation, the party requesting the 25/26 Consolidation shall pay the cost of preparing such amendments; and

(vi) Any Parcel affected by the 25/26 Consolidation must be Self-Parked following completion of the 25/26 Consolidation.

5. **Addition to Section 2.2(b)**. The following is hereby added to the end of Section 2.2(b):

"Notwithstanding the provisions of this Declaration, the owner of Parcels 25 and 26 shall have the right to make such alterations, additions or improvements to: (i) the exterior of the building that are required by the owner as part of an overall exterior scheme and appearance required system wide for other Walgreens facilities, without the written approval by Allen, Allen 24 and BNS, provided that the owner obtains the prior written approval from Home Depot, which approval shall not be unreasonably withheld or delayed, and provided further that in the event that Home Depot does not approve or disapprove of any such alteration, addition or improvement within thirty (30) days of receipt of written request for such approval, such alteration, addition or improvement shall be deemed approved by Home Depot; and (ii) the interior of the building, without the written approval by the Consenting Owners."

6. **Monument Signs**. Notwithstanding the provisions of Section 4.3(d)(i) and (ii) of the 1999 Declaration, in the event respective Building Areas of Parcels 25 and 26 are consolidated for the construction of one (1) building as shown on the Site Plan attached hereto as Exhibit "A": (i) the height of the monument sign for the Walgreens Parcel shall not exceed twelve (12) feet in height (measured from the ground to the highest point of the sign structure) or ten (10) feet in width, and (ii) no more than one (1) monument sign may be constructed on Parcels 25 and 26. Notwithstanding anything to the contrary in Section 4.3 of the Declaration, an electronic readerboard monument sign shall be permitted on the Walgreens Parcel provided such monument sign otherwise complies with the provisions of Section 4.3(d) as amended by this Section 6, as reflected on the monument sign elevations approved by the Consenting Owners in Section 11 below.

7. **Use Restrictions**. Section 5.1 is modified as follows:

(a) The following sentence shall be added to the end of Section 5.1(a): "Notwithstanding the foregoing, the operation of a full service drug store such as Walgreens, CVS, Rite Aid or other national or regional drug store and the sale of products typically and customarily sold therefrom: (i) shall not be considered a "C-Store" for the purposes of this Section 5.1(a); or (ii) shall not be prohibited from the retail sale of food (including aisle space and storage) for off premises consumption."

(b) The following sentence shall be added to the end of Section 5.1(b): "Notwithstanding the foregoing, a retail pharmacy drug store, including, but not limited to, a pharmacy prescription department, including the dispensing of prescription drugs by physicians, dentists, other health care practitioners or entities such as health maintenance organizations, and other pharmaceutical products shall be specifically permitted on Parcels 25 and 26."

(c) The following sentence shall be added to the end of Section 5.1(c): "Notwithstanding the foregoing, the foregoing restrictions shall not be applicable to the operation of a full service drug store such as Walgreens, CVS, Rite Aid or other national or regional drug store."

(d) The following shall be added to the beginning of the last sentence of Section 5.1(d): "Excluding Parcels 25 and 26, . . ."

(e) The following shall be added to the end of Section 5.1(e): "Notwithstanding the foregoing, the revival of Subsections 5.1(a), (b) and (c) shall be subject to the terms and provisions of this Third Amendment."

(f) Notwithstanding anything to the contrary in Section 5.1(f), nothing therein shall be interpreted to preclude Walgreen Co. from selling or dispensing one or more of the items described therein as an incidental part of its business.

8. **Outdoor Sales.** Notwithstanding anything to the contrary in Section 4.5 of the Declaration, the Common Area located on the sidewalks adjacent to the building on the Walgreens Parcel may be used by Walgreen Co. for the sale or display of merchandise in a manner consistent with its operations in other locations in the State of Nebraska.

9. **Building and Common Area Development.** The Consenting Owners have reviewed the plans for the improvements to be constructed on the Walgreens Parcel prepared by Olsson Associates and Davis Design as received by Allen on January 18, 2008, which are attached hereto as Exhibit "B", (including the site plan, exterior building elevations, and monument sign elevation) and hereby indicate their approval of the same in accordance with Section 2 of the Declaration and, with respect to the drive-thru facilities, Section 5.4 of the Declaration. The Consenting Owners hereby acknowledge and agree that the building to be constructed on the Walgreens Parcel shall have two (2) front elevations on Webb Road and 13th Street.

10. **Temporary Signs.** Notwithstanding anything to the contrary in the Declaration and subject to obtaining local governmental approvals, Walgreen Co. shall be permitted to install temporary signage on the Walgreens Parcel announcing the imminent and/or grand opening of its business.

11. **Counterparts.** This Third Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

12. **Ratification.** Except as amended herein, the Declaration remains in full force and effect and the parties hereby ratify and confirm the Declaration as amended hereby.

Executed as of the date and year first written above.

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- SIGNATURES APPEAR ON THE FOLLOWING PAGES]

EXHIBIT "A"

200807155

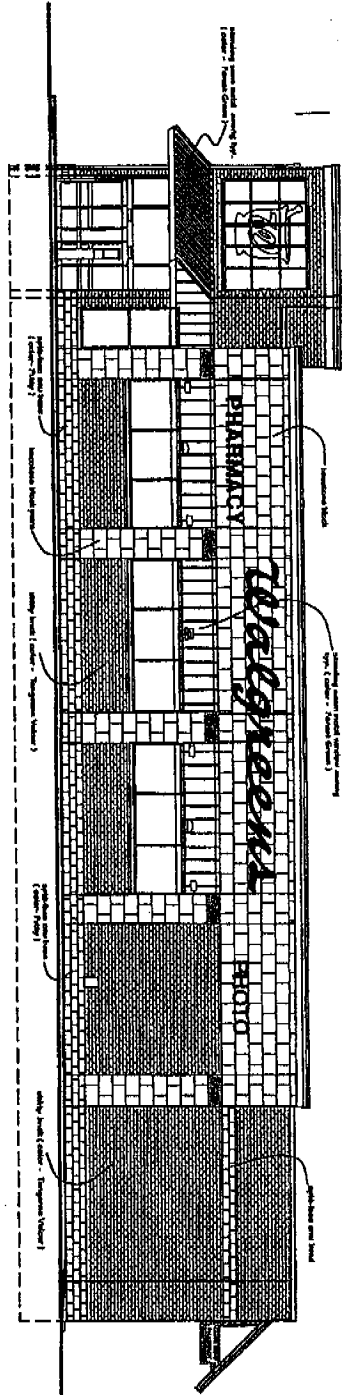
Site Plan of Walgreens Parcel

EXHIBIT "B"

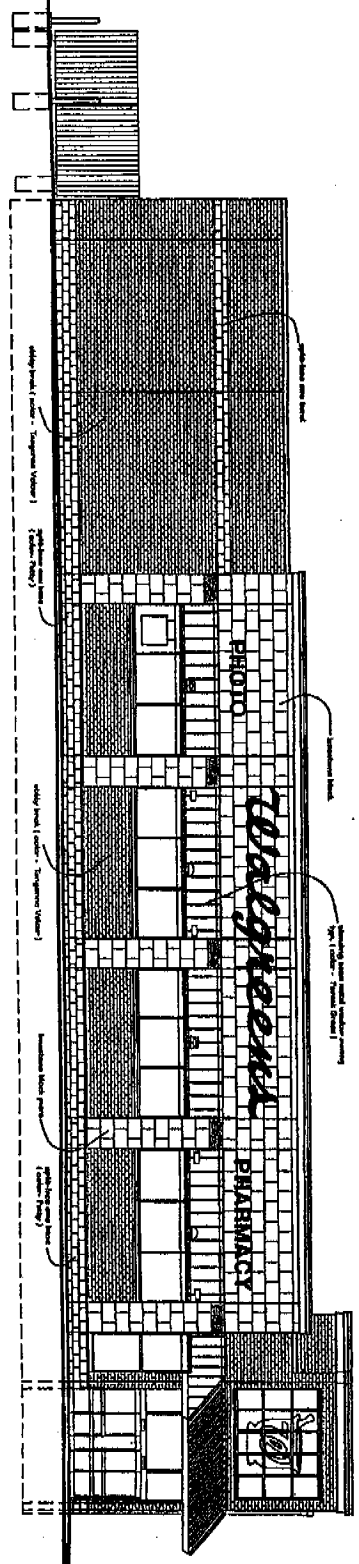
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Walgreens' Plans

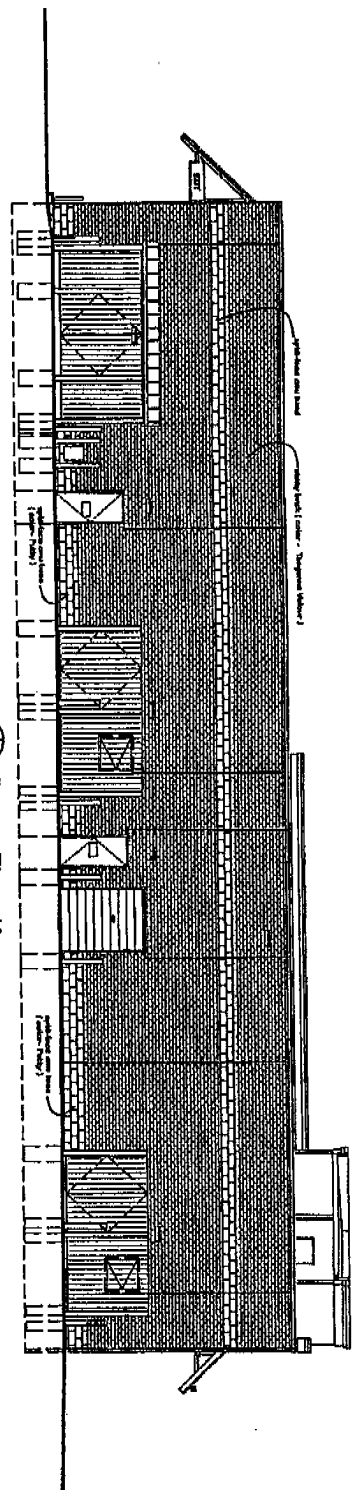
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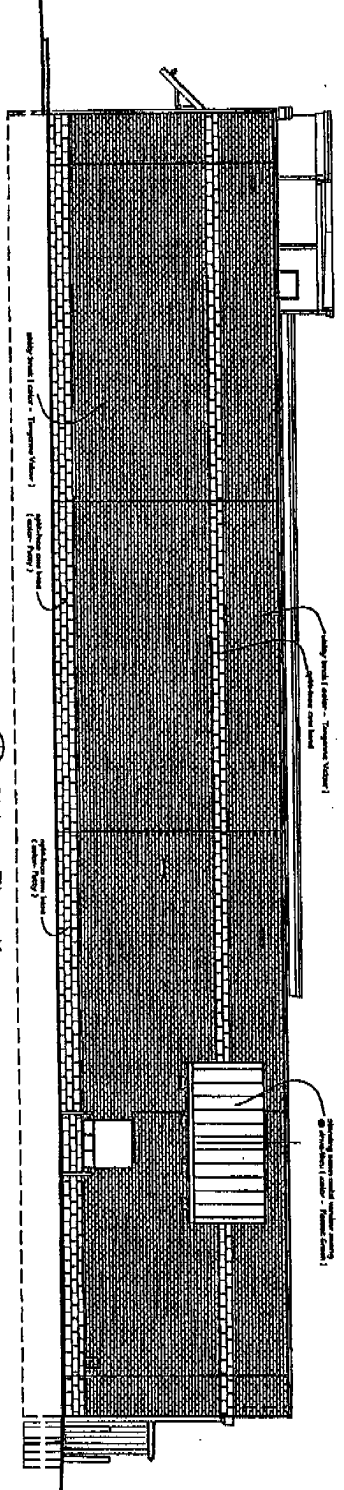
d1 Front Elevation
SCALE: 1/8" = 1'-0"



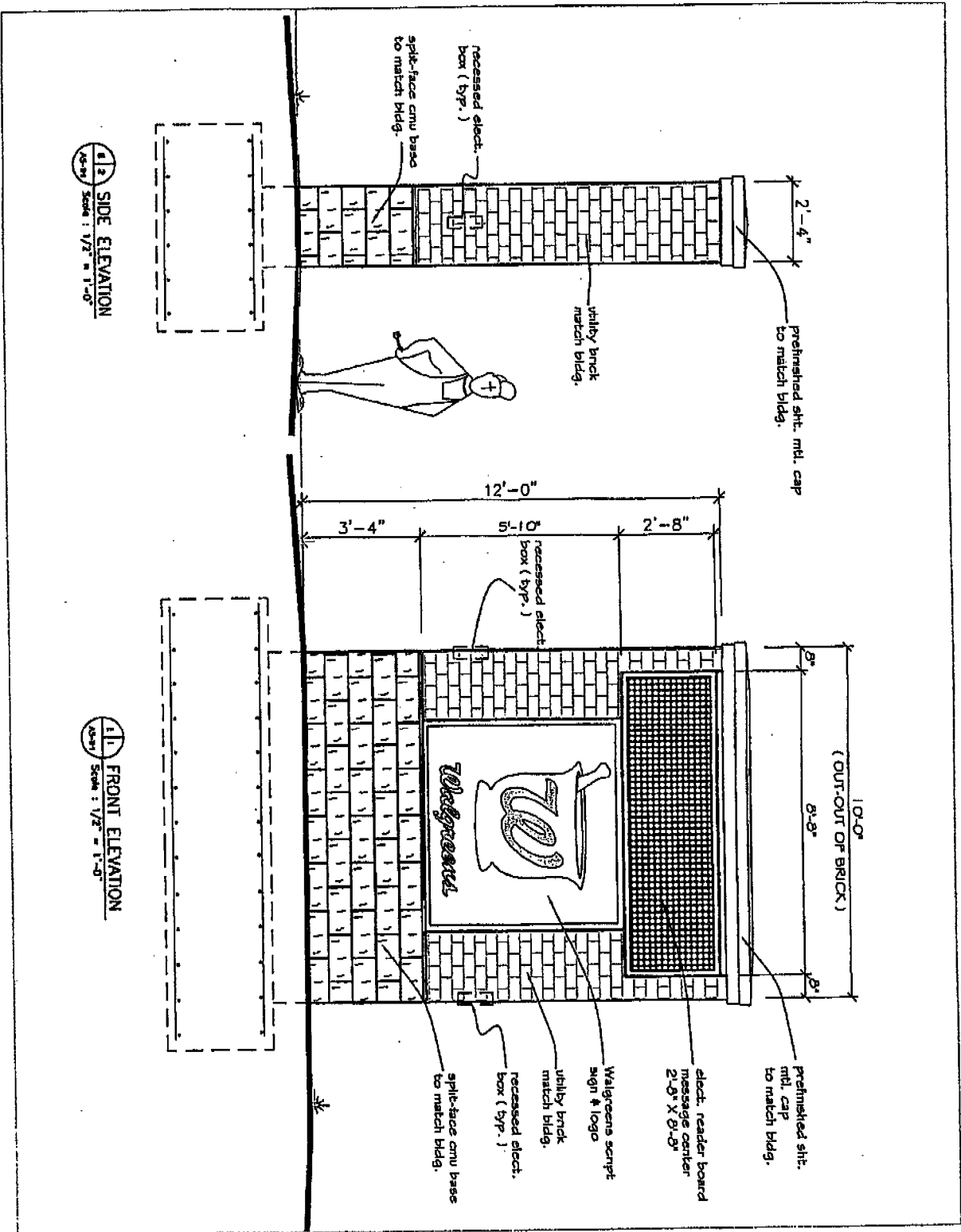
d2 Front Elevation
SCALE: 1/8" = 1'-0"



E19 Rear Elevation
AS4 SCALE 1/8" = 1'-0"



E14 Side Elevation
AS4 SCALE 1/8" = 1'-0"



DAVIS
DESIGN

Title
Drawing
Subtitle 1
Subtitle 2

Project
1
2
3

DATE: 1/1/95
DRAWING: SP-
FROM SHEET: A1-1

Lincoln:
211 North 14th Street
Lincoln, NE 68508
Phone: (402) 476-9700
FAX: (402) 476-9722

Omaha:
4245 South 147th Street
Omaha, NE 68137
Phone: (402) 341-6600
FAX: (402) 341-6611

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Exhibit "A"

Lots 1 and 2 Meadowlark West Fourth Subdivision